Sprint

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December 9, 2002

Ms. Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: ***Ex Parte* Presentation**
In the Matter of the Federal-State Joint Board on Universal Service, et al.,
CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170
and NSD File No. L-00-72

Dear Ms. Dortch:

On behalf of Sprint Corporation, Richard Juhnke, Jeb Benedict and I met on December 6, 2002 with Daniel Gonzalez, Senior Legal Advisor to Commissioner Kevin J. Martin. The policy positions expressed by Sprint were consistent with Sprint's comments and *ex parte* filings in these proceedings. Specifically, we reviewed the issues discussed in Sprint's December 3, 2002 *ex parte* filing, a copy of which is attached.

In accordance with Section 1.1206 of the Commission's Rules, Sprint hereby submits electronically this *ex parte* communication in the above-referenced proceedings.

Sincerely,

Marybeth Banks

Marybeth M. Banks

Attachment
cc: Daniel Gonzalez

Sprint

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December 3, 2002

Ms. Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: ***Ex Parte* Presentation**
In the Matter of the Federal-State Joint Board on Universal Service,
CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170
and NSD File No. L-00-72

Dear Ms. Dortch:

Sprint Corporation, pursuant to section 1.1206(b) of the Commission's Rules, 47 C.F.R. § 1.1206(b), hereby submits electronically an *ex parte* communication in the above-referenced proceedings to address proposals to maintain a revenue-based assessment, modified to incorporate a "bill and remit" concept, perhaps with an increase in the wireless "safe harbor."

At the outset, Sprint wishes to reiterate that the current revenue-based USF methodology is unsustainable now, and will be even more so after April 2003 when it will no longer be supported by the unused funds from the schools and libraries support mechanism. Sprint is deeply concerned by the continuation of a revenue-based methodology any longer than absolutely necessary because of its fundamental flaws that render it inequitable and discriminatory. The current methodology carves out particular categories of service providers to which the USF burden does not apply, while subjecting other carriers to significant USF costs. This lack of competitive neutrality is exemplified by the exemption of international-only carriers, which seriously disadvantages carriers that provide a full range of long distance services, and the exemption of IP telephony, which places conventional carriers at a significant cost disadvantage. Other major problems with the current method include the lack of a rational way to allocate flat charges for bundles of telecommunications services, equipment and non-telecommunications services to the interstate/international jurisdiction and the six-month revenue lag that penalizes carriers with shrinking revenues. All of these problems are eliminated by connection-based methodologies, such as the one Sprint proposed, and by the number-based methodology espoused recently by AT&T and the Ad Hoc Telecommunications Users group.

Only one of these problems – the revenue lag issue – would be resolved by incorporating "bill and remit" into a revenue-based plan. Moreover, it is now apparent that in order to work fairly and equitably, the Commission would have to promulgate detailed rules for incorporating "bill and remit" into a revenue-based mechanism. This need is made clear by a recent *ex parte* in which AT&T has introduced a new concept, "unbillable" revenues, defined as revenues on which it is "unable to bill a USF connectivity fee."[1] According to AT&T, such "unbillable" revenues derive from: (1) an incumbent LEC refusing to add a line item to assess the USF charge when billing on behalf of a long distance carrier and (2) customers who claim that their contract precludes AT&T from billing the USF charge. As discussed below, exceptions should not be made to the "bill and remit" assessment for either category. AT&T's letter also raises issues and surfaces complications with such a plan and highlights the need for clear and explicit rules to avoid providing some carriers with unfair and unwarranted advantages.[2]

First, if the Commission adopts a "bill and remit" contribution methodology, it should not exclude "unbillable" revenues billed by certain LECs on behalf of some long distance carriers. To create such an exception will afford AT&T and others the opportunity to reduce their charges to certain user groups. In particular, this unfair exclusion would permit AT&T to avoid payment of USF charges on its collect and third-party billed calls, as well as presubscribed customers that are billed on AT&T's behalf by certain LECs. AT&T provides no indication of how many LECs refuse to bill the USF charge for these calls, or the associated revenue. Considerable amounts of collect and third-party billed calling revenue may be involved here because, as the Commission is aware, the rates for such calls are high; and any exclusion of such calls could potentially eliminate hundreds of millions of dollars from the eligible revenue base. This exclusion will improperly increase the burden on customers of other long distance carriers, since the burden not borne by AT&T's customers must be borne by others in order to recover the total program cost. The Commission should require AT&T (and other similarly situated carriers) to bill the USF on such revenue by including the USF fee with the usage charges it submits to these LECs for billing.

Second, AT&T states that it will not be able to bill certain business customers the USF rate established by the Commission in instances where "an individual customer asserts that, because of contract language or some other reason, AT&T cannot bill the customer the USF connectivity charge." Id. To permit AT&T to exclude certain business customers – presumably its very largest customers which have negotiated deals with AT&T under which the USF is waived or otherwise is not applied – would result in unjust and unreasonable discrimination, in blatant violation of Section 202(a) of the Communications Act, and would give AT&T an unfair competitive advantage in serving such customers. This discriminatory treatment will provide the customers for whom the fee is waived an incentive to extend any contract with AT&T which waives USF charges. AT&T should not be permitted to lower its USF burden by declaring that USF assessments on certain of its customers are "unbillable." In this regard, the Commission

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[1] Letter in the above-captioned dockets from Robert W. Quinn, Jr., AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, dated November 7, 2002.
[2] No such problems exist in incorporating "bill and remit' into a connection-based or number-based plan.

must specify that the deduction for uncollectibles is to be based on the carrier's overall uncollectible amount used for taxation purposes, rather than using a USF-specific bad debt rate. Otherwise, it will give carriers an incentive to "look the other way" if their customers refuse to pay the USF charge.

Third, the Commission should address the appropriate application of the USF fee to long distance carriers' monthly recurring charges ("MRCs"). Failure to define specifically the portion of the MRC which must be considered interstate or international usage will result in inconsistency among carriers. Sprint therefore suggests that, as an interim measure, the Commission require the application of the USF fee to the entire MRC for long distance service. Application to the entire amount avoids the need for allocations and therefore should be implemented easily by those carriers that do not already apply the USF fee in this manner.

At present, most MRCs are associated with the carriers' long distance plans. The complexity of the allocation increases, however, as additional products, including products which are not regulated, are bundled with long distance services. Specific guidance is needed from the Commission regarding the method of allocating monthly recurring charges in order to ensure consistent treatment across all carriers.

Fourth, the application of the USF to pre-paid cards must be clarified. Pre-paid cards for domestic and international services are generally sold to distributors who, in turn, sell them to the end users through retail outlets. The fee to the distributors for their services is usually the difference between the price at which the card is sold to the end user and the price paid by the distributor to the long distance provider for the pre-paid card. The long distance carrier may not know how much the distributor charges for the card because the distributor may reduce the price of the card by returning to the end user a portion of the commission for the sale of the card. Many pre-paid cards are targeted to international callers with low rates to particular international countries, and providers of such cards do not contribute to the USF when their interstate revenues are *de minimis*. Thus, in light of the unique set of issues associated with collecting USF on pre-paid cards under a "bill and keep" regime, Sprint urges the Commission to simply eliminate the USF charge from such cards. Alternatively, Sprint suggests that the USF fee should be applied to the amount the long distance carrier charges the distributor for the cards because this is the amount that the carrier actually "bills" for the card.

Fifth, carriers should be permitted to retain a percentage of their eligible revenues for administrative costs, but the Commission should establish a uniform allowance for such costs. Otherwise, carriers claiming high administrative costs will be rewarded for their inefficiency.

In short, if the Commission adopts a "bill and remit" revenue-based interim methodology, it must adopt specific, detailed rules to address these issues and to ensure that all carriers are billing their customers the USF fee in a uniform and equitable manner.

Regarding the wireless "safe harbor," the Cellular Telecommunications & Internet Association submitted the results of studies conducted by six wireless carriers based on billing records and traffic studies which showed their percentages of interstate traffic ranged from 10% to 28.5%.[3] On November 19, 2002, the Coalition for Sustainable Universal Service ("CoSUS") submitted an alternative analysis based on Universal Service Administration Corporation revenue data which purports to show that the safe harbor should be approximately 40%.[4] The fundamental flaw in CoSUS's analysis is that it is based on the invalid assumption that the products and services offered by wireless carriers are similar to the total universe of products offered by wireline carriers. On the contrary, wireline carriers provide numerous products – such as special access, private line and frame relay – which are considered jurisdictionally interstate if more than 10 percent of the traffic over them is interstate and which most wireless providers do not have in their portfolio of products. Therefore, the percentage of total revenues that are classified as interstate and international for wireline carriers will be significantly higher than the percentage of their revenues from ordinary voice services. Clearly, if the Commission is considering an increase in the "safe harbor," reliance should be placed on studies performed by the wireless industry, and not on the inapposite analysis of CoSUS.

Sincerely,

Marybeth Banks

Marybeth M. Banks

cc: Christopher Libertelli
Jordan Goldstein
Matthew Brill
Dan Gonzales
William Maher
Carol Mattey
Jessica Rosenworcel
Eric Einhorn
Diane Law Hsu
Paul Garnett
Vicki Byrd
Narda Jones
Sonja Rifken
James Schlichting

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[3] Letter in the above-captioned dockets from Michael F. Altschul, CTIA, to Marlene H. Dortch, Secretary, Federal Communications Commission, dated September 30, 2002.

[4] Letter in the above-captioned dockets from John Nakahata, on behalf of CoSUS, to Marlene H. Dortch, Secretary, Federal Communications Commission, dated November 19, 2002.